

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 101 of 1997

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JETHSINGH D CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 101 of 1997
MR BA VAISHNAV for Petitioner No. 1-9
RULE SERVED for Respondent No. 1-2
MS MITA S PANCHAL, AGP for Respondent No. 3,3

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 20/12/2004

ORAL JUDGEMENT

#. The main grievance agitated in this petition under Article 226 of the Constitution of India by the petitioners is to set aside the action of the respondents

in asking the petitioners to give their willingness for appearing in examination under Rule 27 of the Bombay State Reserve Police Force Rules, 1959, as amended by notification dated 2.12.1991.

#. After issuance of notice, this matter was ordered to be placed for final arguments vide order dated 15.1.97. During the pendency of this petition, Home Department of the State of Gujarat has issued a notification dated 26.5.98, whereby Rule-27 of the Bombay State Reserve Police Force Rules, 1951 was substituted in exercise of powers conferred by Section 21 of the Bombay State Reserve Police Force Act, 1951. The said substituted Rule-27 reads as under:-

"27. The Company Commander or Armed Police Inspector.

The appointment by promotion to the post of Company Commander or to the post of Armed Police Inspector shall be made on the basis of merit-cum-seniority from amongst the persons who have worked for not less than 7 years in the cadre of Platoon Commander or Armed Police Sub Inspector;

Provided that where an appointing authority is satisfied that a person having experience specified above is not available for promotion and that it is necessary in the public interest to fill up the post by promotion of a person having experience of lesser period, it may, for reasons to be recorded in writing, promote such person who has experience of a period not less than two-thirds of the period specified above".

2.1 The aforesaid notification along with the communication dated 16.8.99 is produced by the learned Assistant Government Pleader Ms. Panchal during the course of the final hearing of this petition. According to her, in view of the substituted Rule-27 as contained in this notification dated 26.5.98, grievance of the petitioners no more survives and accordingly, the subject matter also need not require to be adjudicated.

#. Mr. Vaishnav, learned advocate appearing for the petitioners has perused the notification and agrees that the main grievance with regard to provisions of the erstwhile Rule-27 before the issuance of this notification dated 26.5.98 is redressed. However, he has submitted that in case of difficulty, liberty may be

reserved to the petitioners if there is any grievance about even the provisions of the new notification dated 26.5.98, to take appropriate action in accordance with law.

#. It goes without saying that in case, if the petitioners have any grievance with regard to substituted Rule-27 of the State Reserve Police Force Rules, 1959 framed under Section 27 of the Bombay State Reserve Police Force Act, 1951, it will be open for the petitioners to take appropriate action in accordance with law for new cause of action.

#. In view of the aforesaid facts and circumstances of the case, the subject matter of the petition no more requires to be adjudicated. The petition is disposed of accordingly. Rule issued in this matter stands discharged with liberty to the petitioner to agitate the grievances, if any, with regard to the notification dated 26.5.98 issued by the Home Department of the State of Gujarat, in accordance with law.

[ANANT S. DAVE, J.]
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